

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Gayle Theodore

v.

Civil No. 10-cv-269-JL

Symphony Diagnostic Services  
No. 1

**SUMMARY ORDER**

Plaintiff Gayle Theodore asserts state-law claims for wrongful termination and breach of contract against her former employer, Symphony Diagnostic Services No. 1. This court has subject-matter jurisdiction under [28 U.S.C. § 1331\(a\)\(1\)](#) (diversity), because Theodore is a citizen of New Hampshire, and Symphony is a California corporation with its principal place of business in Pennsylvania.

Symphony has moved for summary judgment on both of Theodore's claims. See [Fed. R. Civ. P. 56](#). As discussed at the oral argument on the motion, the court believes there are genuine disputes of material fact that preclude summary judgment in Symphony's favor. These include, but are not necessarily limited to:

- whether Theodore actually took a "sick day," the ostensible reason for her termination, or whether she had permission for her absence;

- whether Symphony terminated Theodore in bad faith for doing something her supervisor had expressly condoned, and proffered a reason for Theodore's discharge that was not supported by the record; and
- whether public policy would encourage the actions for which Theodore was fired.

Symphony's motion for summary judgment (document no. 19) is therefore DENIED.

**SO ORDERED.**

A handwritten signature in black ink, reading "Joe Laplante", written over a horizontal line.

Joseph N. Laplante  
United States District Judge

Dated: February 24, 2012

cc: Leslie H. Johnson, Esq.  
Larry Besnoff, Esq.  
Daniel E. Will, Esq.